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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,376	05/12/2007	Bertrand Babinet	1121.03002	5894
24254	7590	06/16/2009	EXAMINER	
JACKSON ESQUIRE			CRANDALL, LYNSEY P	
ROGER A. JACKSON			ART UNIT	
209 KALAMATH STREET			PAPER NUMBER	
UNIT 9			3769	
DENVER, CO 80223-1348			MAIL DATE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/596,376

**Applicant(s)**

BABINET ET AL.

**Examiner**

LYNSEY CRANDALL

**Art Unit**

3769

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 May 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 39 and 40 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 39 and 40 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 11 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of 39-40 in the reply filed on 5/20/2009 is acknowledged.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 39-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. The term "substantially" in claims 39-40 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The limitation of "a shroud that occludes substantially all external environmental light from said translucent element" has therefore also been rendered indefinite.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,554,439 to Teicher et al. and further in view of U.S. 2004/0227056 to Neuberger et al.

8. Teicher teaches providing illumination apparatus consisting of individually controlled light sources (1, Fig 1) by control circuitry (electronic driver 2, Fig 1) and calibration circuitry (sensor array 4, Fig 1). The sensor array senses the intensity (brightness) and spectral qualities (color) of the light produced by the illumination sources 1 and sends the information to the computer (3, Fig 1) which is programmed to adjust the light output of the illumination sources to match the desired illumination conditions (Col 3, lines 60-67). The software also permits the computer 3 to utilize the incoming information from the sensor array 4 to test and calibrate the illumination sources 1, and control the intensity of each different-colored illumination source to generate the desired illumination pattern over time. The system may be calibrated by placing the sensor array 4 near where the subject will be located. Other sources of

illumination are reduced (to zero, if possible), and in any case are held constant. The computer 3 then applies a very small power level to the first illumination source, waits a suitable amount of time (up to about one second for incandescent illumination sources, generally less for other types) for the emitted light levels to reach equilibrium, and stores the values generated by the sensor array 4. The computer 3 then applies a sequence of successively increasing power levels, each slightly larger than the one before, storing the sensor values for each power level. The process is repeated for each bulb (Col 4, lines 15-32). Teicher also teaches a monitor (7, Fig 1) for displaying information, including a description of the illumination conditions (brightness and color).

9. Teicher is silent with regards to a shroud associated with the calibration circuitry, but does teach that preferably all the external light is reduced to zero (Col 4, lines 22-24). Neuberger teaches a calibration device for a light source that includes a shroud (calibration sheath 113, Fig 1) that blocks out substantially all external environmental light to provide the most accurate calibration (Par 0037). It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to include the shroud taught by Neuberger in the device taught by Teicher in order to occlude all ambient light and provide the most accurate calibration data as taught by Neuberger.

10. In the method of calibrating an illumination device, the step of providing a specific light device with a plurality of light emitting diodes and a translucent element is given limited patentable weight. Teicher provides a device with individually controlled light sources and calibration circuitry; the fact that these light devices are not LEDs adjacent to a translucent element is not considered significant in the method of calibrating a light

device. It is noted that devices with a plurality of LEDs and translucent diffusing elements are pervasive throughout the art (see U.S. 2004/0024431 to Carlet).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYNSEY CRANDALL whose telephone number is (571)270-7035. The examiner can normally be reached on Monday to Thursday 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hank Johnson can be reached on (571)272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LYNSEY CRANDALL/  
Examiner, Art Unit 3769

/Henry M. Johnson, III/  
Supervisory Patent Examiner, Art  
Unit 3769

6/8/2009